STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs

MSC No.

CLEVELAND WILLIAMS,
Defendant-Appellant,

Court of Appeals No. 239662
Lower Court No. 01-7419

126956

APPELLEE'S BRIEF IN OPPOSITION TO DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL

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The People accept Defendant's jurisdictional statement.

COUNTERSTATEMENT OF QUESTION

I. **When a defendant eligible for a concurrent sentence requests disposition of a pending charge against him, the State has 180 days to begin bringing him to trial. Here, Defendant, facing a *consecutive* sentence, never requested disposition of the instant case and consented to the scheduled trial date, but filed a motion to dismiss on the day of trial which the trial court granted over the prosecutor's procedural and substantive objections. Did the trial court err in reconsidering its ruling and reinstating the case?**

Trial Court said:	*No.*
Court of Appeals said:	*No.*
Defendant says:	*Yes.*
People say:	*No.*

II. **This Court need only intervene in cases which are significant to the State's jurisprudence, or in which there is a substantial likelihood of error or injustice. Here, a trial court has ordered a case to go forward to trial, leading the Court of Appeals to dismiss the prosecutor's appeal as moot. Does this Court have any reason to intervene, prior to trial?**

This question was not before the trial court.

This question was not before the Court of Appeals.

Defendant says:	*Yes.*
People say:	*No.*

COUNTERSTATEMENT OF FACTS

Defendant was on parole when the events leading to the current charges occurred on or about May 7, 2000,[1] and was returned to the custody of the Department of Corrections on May 23, 2000.[2] The Prosecutor's Office recommended a warrant for armed robbery stemming from the underlying incident on May 26, 2000, which was approved by a magistrate on June 2, 2000.[3] About a year later, on June 28, 2001, Defendant was bound over for trial, following a preliminary examination in 36th District Court.[4]

Following substitution of counsel for reasons which do not appear on the record, successor counsel and Defendant appeared before the trial court on October 12, 2001 for a Final Conference. At the Final Conference, it appeared that the Department of Corrections had rescinded Defendant's parole, and that his earliest "out date" would be July 27, 2002.[5] After a short discussion about whether Defendant preferred to return to prison, or to remain in the County Jail, the trial court set a trial date of January 9, 2002, and inquired if that was acceptable to the parties; this lead to the following exchange:

THE COURT: What's the earliest date you can give him....

The earliest date we can give you is January 9.

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[1]DEFENDANT'S MOTION TO DISMISS, 1.

[2]M, 1/9/02, 4.

[3]M, 1/9/02, 3-4.

[4]M, 1/9/02, 9. (*See*, Docket Entries).

[5]FC, 10/12/01, 2-3.

THE DEFENDANT: I can accept that, your Honor. Thank you very much. I can accept that.

[DEFENSE COUNSEL]: Fine, your Honor.

[PROSECUTOR]: That's fine with the People, Judge.

THE COURT: Trial date, January 9. Anything further?

[PROSECUTOR]: Nothing from the People, Judge.

[DEFENSE COUNSEL]: I want to check to see if I have a discovery order....[6]

On the date set for trial, the prosecution was ready for trial with its witnesses — the victim and two police officers.[7] On that date, Defendant served the trial prosecutor with a motion to dismiss, alleging a violation of Defendant's right to a speedy trial.[8] Over objections relating to the lack of notice,[9] the trial court proceeded to grant Defendant's motion and dismiss the case.[10]

On the prosecution's appeal, the Court of Appeals vacated the trial court's order of dismissal on grounds that the prosecution had insufficient notice of the hearing, and remanded the cause to the trial court for reconsideration,[11] directing its attention to the cases of *People v Chavies,*[12] *Barker v*

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[6]FC, 10/12/01, 5.

[7]M, 1/9/02, 2.

[8]M, 1/9/02, 2-3.

[9]M, 1/9/02, 19-21.

[10]M, 21-23. ORDER OF JANUARY 9, 2002.

[11]COA #239662, Order of June 6, 2003.

[12]*People v Chavies,* 234 Mich App 274 (2000).

Wingo,[13] and *People v Grimmett*.[14] On remand, the trial court reconsidered its earlier ruling, and denied Defendant's motion to dismiss.[15] Subsequently, the Court of Appeals entered an order dismissing the prosecution's appeal and remanding the cause for trial.[16]

The matter is now before the Court on the Defendant's application.

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[13]*Barker v Wingo,* 407 US 514, 92 S Ct 2182; 33 L Ed 2d 101 (1972).

[14]*People v Grimmett*, 388 Mich 590 (1972).

[15]Wayne CirCt #01-07419, Order of October 3, 2003.

[16]COA #239662, Order of July 9, 2004.

ARGUMENT

I.

WHEN A DEFENDANT ELIGIBLE FOR A CONCURRENT SENTENCE REQUESTS DISPOSITION OF A PENDING CHARGE AGAINST HIM, THE STATE HAS 180 DAYS TO BEGIN BRINGING HIM TO TRIAL. HERE, DEFENDANT, FACING A *CONSECUTIVE* SENTENCE, NEVER REQUESTED DISPOSITION OF THE INSTANT CASE AND CONSENTED TO THE SCHEDULED TRIAL DATE, BUT FILED A MOTION TO DISMISS ON THE DAY OF TRIAL WHICH THE TRIAL COURT GRANTED OVER THE PROSECUTOR'S PROCEDURAL AND SUBSTANTIVE OBJECTIONS. THE TRIAL COURT DID NOT ERR IN RECONSIDERING ITS RULING AND REINSTATING THE CASE.

Standard of Review

The first aspect of the trial court's order of dismissal for us to consider is whether the trial court erred initially in dismissing the case on a 180-day violation — over a seven-day rule objection by the prosecution — when Defendant was facing a consecutive, rather than concurrent sentence. Ordinarily, this Court would review the matter for a hearing on the question of prejudice; in this case, however, the trial court's order is so apparent that peremptory relief may be appropriate. In either case, however, the question is one of law, which the Court reviews *de novo*.[17]

Discussion

In this case, on the date set for trial, Defendant moved in the trial court to dismiss the case, claiming a violation of his right to speedy trial. Overruling the prosecutor's objection that the

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[17]*See, eg, People v Carpentier,* 446 Mich 19 (1994).

motion violated the 7-day rule,[18] the trial court granted the motion, ruling that the delay was "on the face of it...inexcusable."[19] This ruling was in error, however, for several reasons.

A. The statue and court rule the trial court cited to justify dismissal, and relied upon by Defendant, do not apply to crimes committed by parolees.

Though faced with a dispositive motion for which he had no notice, the trial prosecutor nevertheless cited the controlling case authority to the trial court — which the trial court neglected to follow.

In *People v Chavies,*[20] the Court of Appeals confronted a situation very similar to this case: the defendant — like Defendant in this case — committed a murder while on parole. As a result, the Department of correction violated his parole, and returned him to prison. There, the defendant served his remaining sentence, and — remaining in custody in the County jail while awaiting trial for the murder charge — was subsequently tried and convicted of second-degree murder. While his appeal was pending, Defendant moved in the trial court for a dismissal on speedy trial grounds, claiming — as Defendant claims here — that because the prosecutor or Department of Corrections should have known about the untried murder charge, the nineteen-month delay between the warrant and his trial entitled him to a dismissal.

In rejecting the defendant's claim, the *Chavies* Court noted that the entire purpose of the 180-day rule was "to dispose of untried charges against prison inmates so that sentences may run

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[18]M, 1/9/02, 13, 22-23.

[19]M, 1/9/02, 19.

[20]*People v Chavies,* 234 Mich 274 (2000).

concurrently."[21] However, when a defendant commits a crime while on parole, the goal of concurrent sentences is impossible, since a parolee committing a crime must receive a consecutive sentence under state law.[22] Thus, since the goal of fostering concurrent sentences "does not apply in a case where a mandatory consecutive sentence is required,"[23] this Court held that the 180-day rule did not apply to crimes committed by parolees:

> Here, it is undisputed that the murder occurred while defendant was on parole. Even if his parole had not been revoked or his prior sentence had not expired, concurrent sentences were impossible because, if found guilty, defendant would receive mandatory consecutive sentences. We are thus convinced that the trial court erred as a matter of law in applying the 180-day rule to defendant in this case....[24]

In this case, Defendant himself admits that he "was on parole when this actual event happened,"[25] and the trial court noted his return to the custody of the Department of Corrections on May 23, 2000 — about a week before charges were filed.[26] Accordingly — *regardless of whether the Department or the prosecutor realized that Defendant had a charge outstanding against him* —

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[21]*People v Chavies, supra* at 280, quoting *People v Bell*, 209 Mich App 273, 279 (1995).

[22]MCL §768.7a(2). *See, People v Chavies, supra* at 280-281.

[23]*People v Chavies, supra* at 280, quoting *People v McCullum,* 201 Mich App 463, 465 (1993).

[24]*People v Chavies, supra* at 280-281 (Citations omitted).

[25]M, 1/9/02, 4.

[26]The trial court noted Defendant's return to DOC custody on May 23rd, and court records disclose that a magistrate signed the warrant in this matter on June 2, 2000, and bound Defendant over for trial on June 28th. (M, 1/9/02, 8-9).

there is no basis for finding a violation of the 180-day rule, and this portion of the trial court's original ruling could not stand,[27] leading the court to reinstate the matter upon remand.

B. As Defendant has shown no prejudice in the delay between the warrant and his trial, the trial court erred in dismissing the case on speedy trial grounds.

In addition, while the trial court continued to find a violation of Defendant's Sixth Amendment right to speedy trial, it is also clear that this portion of the court's ruling could not withstand scrutiny — leading the court to reverse itself upon reconsideration.

The People gladly acknowledge that a defendant has both a constitutional and statutory right to a speedy trial.[28] Where the delay[29] is sufficient to "trigger further investigation" into the speedy trial issue,[30] the length of the delay is but one factor for consideration by the court. The court must apply a four-part balancing test,[31] considering not only the length of the delay,[32] but the reason for

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[27] *People v Chavies, supra.*

[28] US Const, Am VI, XIV; Const 1963, Art I, § 20; MCL 768.1; MSA 28.1024.

[29] The time runs from defendant's arrest, not the issuance of the arrest warrant. *United States v Marion*, 404 US 307, 321; 92 S Ct 455; 30 L Ed 2d 468 (1971) ("we decline to extend the reach of the amendment to the period prior to arrest"). Here, however, the trial court appears to impute an "arrest" on the date of the warrant — and undertook no steps to compute what part of the ensuing nineteen month "delay" between the warrant and the trial date were attributable to the defense.

Even assuming the "arrest" effective on the date of the warrant — *i*e, June 2, 2000, (M 1/9/02, 4, 9) — the time periods involved in this case do not warrant a dismissal: Facing a consecutive sentence as a parole violator, Defendant was bound over for trial about a year after the warrant. (M, 1/9/02). The Final Conference in this matter occurred within four months of the bindover — or, about sixteen months after the warrant — at which time Defendant indicated that the date scheduled for trial was fine with him. (FC, 10/12/01, 5).

[30] *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994).

[31] *See, eg, People v Hill,* 402 Mich 272, 283 (1978).

[32] *People v Grimmett,* 388 Mich 590 (1972).

the delay,[33] whether the defendant made a timely assertion of his right to a speedy trial,[34] and whether the defendant suffered any prejudice as a result of the delay.[35] Where the delay is less than eighteen months, the defendant must prove that he suffered prejudice; where the delay exceeds eighteen months, prejudice is presumed, and the prosecution must show that he *did not* suffer prejudice.[36]

In this case, however, the record is utterly devoid of any basis for dismissal: While courts hold that the time for judging a speed trial begins to run from the defendant's actual arrest, rather than the issuance of the arrest warrant,[37] here the trial court appeared to impute an "arrest" on the date of the warrant — and undertook absolutely no steps to compute what part of the ensuing nineteen month "delay" between the warrant and the trial date were attributable to the defense.

Even assuming, for the sake of argument, that the "arrest" was effective on the date of the warrant,[38] the time periods involved in this case do not warrant a dismissal: Facing a consecutive

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[33] *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972).
Among the reasons courts cite as attributable to the defense are three factors which apply directly to this case: a change of counsel, the defendant's failure to make a timely assertion of his right to speedy trial, and defense acquiesence in matters of scheduling. *See, eg, People v Collins,* 388 Mich 680, 692 (1972); *People v Gravedoni,* 172 Mich App 195, 199 (1988); *People v Jones,* 192 Mich App 737 (1991).

[34] *Barker v Wingo, supra* at (Noting that a defendant's "failure to assert the right will make it difficult for a defenadnt to prove he was denied a speedy trial."

[35] *Barker v Wingo, supra*; *People v Cain, supra* at 112.

[36] *People v Grimmett, supra; People v Cain, supra.*

[37] *United States v Marion*, 404 US 307, 321; 92 S Ct 455; 30 L Ed 2d 468 (1971) ("we decline to extend the reach of the amendment to the period prior to arrest").

[38] The Magistrate signed the warrant on June 2, 2000. (M 1/9/02, 4, 9).

sentence as a parole violator, Defendant was bound over for trial about a year after the warrant.[39] Even so, Defendant acknowledges that the Department of Corrections found him in violation of parole even before the arrest warrant issued in this case,[40] and the Final Conference in this matter occurred within four months of the bindover — or, about sixteen months after the warrant — at which time Defendant indicated that the date scheduled for trial was fine with him.[41] In addition, Defendant's "out date" from his previous sentence has yet to expire[42] — and the only inquiries, findings, or conclusions on the appropriate factors for deciding a speedy trial motion occurred on remand — which lead the court to reverse itself, and deny Defendant's motion:

- Assuming the greatest length of delay possible under the present record there was a delay of about sixteen months between the arrest warrant, and the Final Conference, at which time trial was scheduled for three months into the future. If we attribute none of the delay to the defense — despite the change of counsel three months after the preliminary examination — a delay of nineteen months is sufficient to warrant an inquiry into the remaining factors.[43]

- As the trial court noted on remand, much of the delay was caused by continuances requested by the defense, that Defendant was remiss in asserting his right to a speedy trial, and that there was no discernible prejudice to the defense.[44]

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[39]M, 1/9/02, 4, 9.

[40]M, 1/9/02, 4.

[41]FC, 10/12/01, 5.

[42]FC, 10/12/01, 2-3. Defendant's earliest "out date" is July 27, 2002 — which, as of this writing, has not yet passed.

[43]*See, eg, People v Wickham,* 200 Mich App 106, 109-110 (1993). *See also, People v Gilmore,* 222 Mich App 442 (1997); *People v Cain,* 238 Mich App 95 (1999).

[44]M, 10/3/03, 50-54.

In this case, the trial court initially dismissed the case on the day of trial — despite the fact that the Defendant had not raised any speedy trial demand until that very day, the prosecution was ready to proceed, had its witnesses present, and had no advance notice that anything but a full trial would ensue. Clearly, the trial court had no legal basis for dismissing the case on speedy trial grounds,[45] and this Court must reverse.

C. Defendant waived any speedy-trial objection by agreeing to the date set for trial at the Final Conference.

Lastly, the record of the Final Conference — occurring less than four months after his bindover, and about sixteen months after issuance of the arrest warrant — shows that Defendant not only failed to assert his right to speedy trial at the time, but in fact personally agreed to the trial date.

THE COURT: What's the earliest date you can give him....

The earliest date we can give you is January 9.

THE DEFENDANT: *I can accept that, your Honor. Thank you very much. I can accept that.*

[DEFENSE COUNSEL]: Fine, your Honor.

[PROSECUTOR]: That's fine with the People, Judge.

THE COURT: Trial date, January 9. Anything further?

[PROSECUTOR]: Nothing from the People, Judge.

[DEFENSE COUNSEL]: I want to check to see if I have a discovery order....[46]

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[45] *People v Cain, supra; People v Gilmore, supra; People v Patterson,* 170 Mich App 162 (1988).

[46] FC, 10/12/01, 5 (Emphasis added).

This Court has held that a defendant who agrees to a trial date waives any claim that it does not come soon enough.[47] Accordingly, as Defendant himself *personally agreed* to the trial date, the trial court erred in dismissing the case when he changed his mind, three months later.

[47]*See, eg, People v Jones,* 192 Mich App 737 (1992) *after remand* 197 Mich App 76 (1992); *People v Gilmore, supra. Cf, People v Hendershot,* 357 Mich 300 (1959); *People v Browning,* 104 Mich App 741 (1981) *on rehrg* 108 Mich App 281 (1981).

II.

THIS COURT NEED ONLY INTERVENE IN CASES WHICH ARE SIGNIFICANT TO THE STATE'S JURISPRUDENCE, OR IN WHICH THERE IS A SUBSTANTIAL LIKELIHOOD OF ERROR OR INJUSTICE. HERE, A TRIAL COURT HAS ORDERED A CASE TO GO FORWARD TO TRIAL, LEADING THE COURT OF APPEALS TO DISMISS THE PROSECUTOR'S APPEAL AS MOOT. THIS COURT HAS NO REASON TO INTERVENE, PRIOR TO TRIAL.

Standard of Review

Under MCR 7.300 *et seq*, this Court determines for itself which questions to review.

Discussion

Under MCR 7.302(B), an party seeking this Court's leave to appeal must demonstrate a significant legal question of major significance to Michigan jurisprudence.

In this case, the legal principles at issue are well-established,[48] and there is no apparent need for this Court to intervene prior to trial — particularly since the jury verdict may well render this entire appeal moot.

Accordingly, this Court should deny leave to appeal.

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[48]*See, eg, Barker v Wingo, supra; People v Grimmett, supra; People v Chavies, supra.*

RELIEF

WHEREFORE, this Court should deny Defendant leave to appeal.

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